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United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

M/V COSCO BUSAN, LR/IMO Ship No.  
9231743, her engines, apparel, electronics,  
tackle, boats, appurtenances, *etc.*, *in rem*,  
REGAL STONE LIMITED, FLEET  
MANAGEMENT LTD., and JOHN COTA, *in*  
*personam*,

Defendants.

Civil No. C07-6045 SC  
(AND RELATED CASES)

IN ADMIRALTY

ANSWER OF THE UNITED STATES  
TO COUNTERCLAIMS OF REGAL  
STONE, LTD. (DEFENDANT AND  
CLAIMANT TO *IN REM*  
DEFENDANT M/V COSCO BUSAN)  
AND DEFENDANT FLEET  
MANAGEMENT, LTD.

1 The answer of the United States of America to the Counterclaims of Regal Stone, Ltd.  
2 (“hereafter Regal Stone”), Defendant and Claimant to *in rem* Defendant M/V COSCO  
3 BUSAN (hereafter the “Vessel”), and Defendant Fleet Management, Ltd. (hereafter “Fleet”),  
4 admits, denies, and alleges on information and belief as follows:

5 1. Paragraph 27 of the Counterclaims allege matters of law to which no response  
6 is required. To the extent that a response would be required, denies the allegations of  
7 Paragraph 27 of the Counterclaims, except admits and alleges the United States’ Amended  
8 Complaint alleges matters of admiralty and maritime jurisdiction within the meaning of Rule  
9 9(h) of the Federal Rules of Civil Procedure and, further, that the United States of America  
10 has waived its sovereign immunity from suit and consented to be sued herein, if at all, only  
11 pursuant to specific statutory waivers of sovereign immunity, and not otherwise.

12 2. Paragraph 28 of the Counterclaims allege matters of law to which no response  
13 is required. To the extent that a response would be required, denies the allegations of  
14 Paragraph 28 of the Counterclaims, except admits and alleges that venue of the United  
15 States’ action pursuant to its Amended Complaint is proper within this District and, further,  
16 that venue concerning the Counterclaims would lie within this District in the event that the  
17 Court had subject matter jurisdiction over the Counterclaims, the latter of which is denied  
18 pursuant to this Answer and affirmative defenses *infra*.

19 3. Denies the allegations of Paragraph 29 of the Counterclaims for lack of  
20 knowledge and information, except admits and alleges that at all times relevant to this action  
21 Regal Stone was/is, *inter alia*, the owner of the Vessel and, further, that the Vessel was/is in  
22 excess of 300 gross tons.

23 4. Denies the allegations of Paragraph 30 of the Counterclaims for lack of  
24 knowledge and information, except admits and alleges that at all times relevant to this action  
25 Fleet, *inter alia*, operated, chartered, managed, and controlled the Vessel.

26 5. Paragraph 31 of the Counterclaims allege certain matters of law to which no  
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1 response is required. To the extent that a response would be required, denies the allegations  
2 of Paragraph 31 of the Counterclaims, except admits and alleges that John J. Cota (“Cota”)  
3 boarded the Vessel at its berth at the Port of Oakland, California, on the morning of  
4 November 7, 2007; that Cota was licensed by the State of California for pilotage on, *inter*  
5 *alia*, the waters of San Francisco Bay; that Cota and the crew of the Vessel jointly caused the  
6 Vessel to depart its berth at the Port of Oakland *en route* a port in the Far East and, in any  
7 event, *en route* a non-United States port; that on November 7, 2007, Cota and the crew of the  
8 Vessel jointly caused the Vessel to allide with the San Francisco-Oakland Bay Bridge (the  
9 “Allision”) prior to leaving San Francisco Bay on the Vessel’s foreign voyage; that Cota was  
10 sailing on his California State pilot’s license at the time of the Allision and, conversely, was  
11 not sailing on his federal pilotage license at the time of the Allision.

12 6. Denies the allegations of Paragraph 32 of the Counterclaims, except admits and  
13 alleges that Cota was licensed by the State of California for pilotage on, *inter alia*, the waters  
14 of San Francisco Bay; that on the morning of November 7, 2007, Cota and the crew of the  
15 Vessel jointly caused the Vessel to depart its berth at the Port of Oakland *en route* a non-  
16 United States port; that on November 7, 2007, Cota and the crew of the Vessel jointly caused  
17 the Allision, thereby causing, *inter alia*, the discharge of approximately 53,000 gallons of  
18 fuel oil into the waters and adjoining shorelines of San Francisco Bay and elsewhere; that at  
19 all relevant times Regal Stone owned the Vessel and following the Allision was designated  
20 as a “Responsible Party” by the United States and the State of California pursuant to, *inter*  
21 *alia*, the Oil Pollution Act of 1990 and other applicable statutes and law.

22 7. Denies the allegations of Paragraph 33 of the Counterclaims for lack of  
23 knowledge and information.

24 8. Paragraph 34 of the Counterclaims allege certain matters of law to which no  
25 response is required. To the extent that a response would be required, denies the allegations  
26 of Paragraph 34 of the Counterclaims for lack of knowledge and information.  
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1           9.     Paragraph 35 of the Counterclaims allege certain matters of law to which no  
2 response is required. To the extent that a response would be required, denies the allegations  
3 of Paragraph 35 of the Counterclaims for lack of knowledge and information.

4           10.    Denies the allegations of Paragraph 36 of the Counterclaims, except admits and  
5 alleges that the United States has filed an Amended Complaint alleging, *inter alia*, that the  
6 United States has incurred response costs, damages, and other disbursements resulting from  
7 the Allision, such that Regal Stone and Fleet, among others, are liable to the United States  
8 as a result of the matters alleged in the Amended Complaint.

9           11.    Paragraph 37 of the Counterclaims allege matters of law to which no response  
10 is required. To the extent that a response would be required, denies the allegations of  
11 Paragraph 37 of the Counterclaims, except admits and alleges the United States' Amended  
12 Complaint alleges matters of admiralty and maritime jurisdiction within the meaning of Rule  
13 9(h) of the Federal Rules of Civil Procedure and, further, that the United States of America  
14 has waived its sovereign immunity from suit and consented to be sued pursuant to the  
15 Counterclaims herein, if at all, solely pursuant to specific statutory waivers of sovereign  
16 immunity, and not otherwise.

17           12.    Paragraph 38 of the Counterclaims allege certain matters of law to which no  
18 response is required. To the extent that a response would be required, denies the allegations  
19 of Paragraph 38 of the Counterclaims, except admits and alleges that Cota boarded the  
20 Vessel at its berth at the Port of Oakland, California, on November 7, 2007; that Cota was  
21 licensed by the State of California for pilotage on, *inter alia*, the waters of San Francisco  
22 Bay; that Cota and the crew of the Vessel jointly caused the Vessel to depart its berth at the  
23 Port of Oakland *en route* a port in the Far East and, in any event, to a non-United States port;  
24 that on November 7, 2007, Cota and the crew of the Vessel jointly caused the Allision; that  
25 Cota held a merchant mariner's license issued by the United States Coast Guard, but was  
26 sailing solely on his California State pilot's license at the time of the Allision and,  
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1 conversely, was not sailing on his federal pilotage license at the time of the Allision; and,  
2 further, that the Amended Complaint of the United States alleges, *inter alia*, that the United  
3 States has incurred response costs, damages, and other disbursements resulting from the  
4 Allision, such that Cota, Regal Stone, Fleet, and the Vessel are jointly liable to the United  
5 States as a result of the matters alleged in the Amended Complaint.

6 13. Denies the allegations of Paragraph 39 of the Counterclaims for lack of  
7 knowledge and information, except admits and alleges that Cota boarded the Vessel at its  
8 berth at the Port of Oakland, California, on November 7, 2007; that Cota was licensed by the  
9 State of California for pilotage on, *inter alia*, the waters of San Francisco Bay; that Cota and  
10 the crew of the Vessel jointly caused the Vessel to depart its berth at the Port of Oakland *en*  
11 *route* a non-United States port; that on November 7, 2007, Cota and the crew of the Vessel  
12 jointly caused the Allision; that Cota held a merchant mariner's license issued by the United  
13 States Coast Guard, but was sailing solely on his California State pilot's license at all times  
14 relevant to this action, including at the time of the Allision and, conversely, that Cota was not  
15 sailing on his federal pilotage license at the time of the Allision; and that the Amended  
16 Complaint of the United States, incorporated by reference herein, sets out the allegations of  
17 the United States, said allegations including, *inter alia*, allegations that the United States has  
18 incurred response costs, damages, and other disbursements resulting from the Allision, such  
19 that Cota, Regal Stone, Fleet, and the Vessel are jointly liable to the United States as a result  
20 of the matters alleged in the Amended Complaint.

21 14. Denies the allegations of Paragraph 40 of the Counterclaims for lack of  
22 knowledge and information.

23 15. Denies the allegations of Paragraph 41 of the Counterclaims.

24 16. Denies the allegations of Paragraph 42 of the Counterclaims.

25 17. Denies the allegations of Paragraph 43 of the Counterclaims for lack of  
26 knowledge and information.

1 18. Denies the allegations of Paragraph 44 of the Counterclaims for lack of  
2 knowledge and information, except denies, without qualification, any and all allegations  
3 concerning negligence or liability of the United States.

4 19. Denies the allegations of Paragraph 45 of the Counterclaims for lack of  
5 knowledge and information, except denies, without qualification, any and all allegations  
6 concerning negligence or liability of the United States.

7 20. Denies the allegations of Paragraph 46 of the Counterclaims.

8 21. Denies the allegations of Paragraph 47 of the Counterclaims.

9 22. Denies the allegations of Paragraph 48 of the Counterclaims.

10 23. Denies the allegations of Paragraph 49 of the Counterclaims.

11 24. Denies the allegations of Paragraph 50 of the Counterclaims.

12 25. Denies the allegations of Paragraph 51 of the Counterclaims.

13 **ANSWERING THE ALLEGATIONS OF THE FIRST COUNTERCLAIM**

14 26. Answering the allegations of Paragraph 52 of the Counterclaims, the United  
15 States of America refers to and incorporates by reference as though fully set forth herein each  
16 and every foregoing paragraph of this Answer to Counterclaims.

17 27. Denies the allegations of Paragraph 53 of the Counterclaims.

18 28. Denies the allegations of Paragraph 54 of the Counterclaims.

19 29. Denies the allegations of Paragraph 55 of the Counterclaims.

20 **ANSWERING THE ALLEGATIONS OF THE SECOND COUNTERCLAIM**

21 30. Answering the allegations of Paragraph 56 of the Counterclaims, the United  
22 States of America refers to and incorporates by reference as though fully set forth herein each  
23 and every foregoing paragraph of this Answer to Counterclaims.

24 31. Denies the allegations of Paragraph 57 of the Counterclaims.

25 32. Denies the allegations of Paragraph 58 of the Counterclaims.

26 33. Denies the allegations of Paragraph 59 of the Counterclaims.

**ANSWERING THE ALLEGATIONS OF THE THIRD COUNTERCLAIM**

34. Answering the allegations of Paragraph 60 of the Counterclaims, the United States of America refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Answer to Counterclaims.

35. Denies the allegations of Paragraph 61 of the Counterclaims.

36. Denies the allegations of Paragraph 62 of the Counterclaims.

37. Denies the allegations of Paragraph 63 of the Counterclaims.

**ANSWERING THE ALLEGATIONS OF THE FOURTH COUNTERCLAIM**

38. Answering the allegations of Paragraph 64 of the Counterclaims, the United States of America refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Answer to Counterclaims.

39. Denies the allegations of Paragraph 65 of the Counterclaims.

40. Denies the allegations of Paragraph 66 of the Counterclaims.

41. Denies the allegations of Paragraph 67 of the Counterclaims.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE, THE UNITED STATES**

**ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

42. The Counterclaims fail to state claims upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE, THE UNITED STATES**

**ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

43. If Counterclaimants sustained injuries and damages by reason of the matters alleged in the Counterclaims, which is denied, then said injuries and damages were caused or contributed to by the acts of other parties and entities, including parties in contract with Counterclaimants, and were not caused or contributed to in any manner by any actions or fault of the United States of America, its officers, agents, vessels, crew, servants, employees or others for whom it was responsible.

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**AS AND FOR A THIRD AFFIRMATIVE DEFENSE, THE UNITED STATES  
ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

44. If Counterclaimants sustained injuries and damages by reason of the matters alleged in the Counterclaims, which is denied, then said injuries and damages were caused in whole or in part by said Counterclaimants' own actions and fault and were not caused in any manner by any actions or fault of the United States of America, its officers, agents, vessels, crew, servants, employees or others for whom it was responsible.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, THE UNITED STATES  
ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

45. The Court lacks subject matter jurisdiction over the Counterclaims.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, THE UNITED STATES  
ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

46. The Court lacks subject matter jurisdiction over the Counterclaims since said Counterclaims solely allege matters of discretionary functions and acts for which the United States of America has not waived sovereign immunity and consented to be sued.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, THE UNITED STATES  
ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

47. The Court lacks subject matter jurisdiction over the Counterclaims since said Counterclaims solely allege matters which are subject to the Constitutional doctrine of separation of powers for which the United States of America has not waived sovereign immunity and consented to be sued.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, THE UNITED  
STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

48. The Counterclaims are barred for lack of subject matter jurisdiction due to failure to comply with conditions prerequisite to suit against the United States.

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1 **AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, THE UNITED STATES**  
2 **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

3 49. The Counterclaims are barred pursuant to estoppel.

4 **AS AND FOR A NINTH AFFIRMATIVE DEFENSE, THE UNITED STATES**  
5 **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

6 50. The Counterclaims are barred pursuant to waiver.

7 **AS AND FOR A TENTH AFFIRMATIVE DEFENSE, THE UNITED STATES**  
8 **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

9 51. The Counterclaims are barred pursuant to unjust enrichment.

10 **AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, THE UNITED**  
11 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

12 52. Counterclaimants failed to mitigate their damages, which claims of damages,  
13 and claims of liability upon which said claims of damages are based, are fully denied by the  
14 United States.

15 **AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE, THE UNITED**  
16 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

17 53. The Counterclaims are barred pursuant to fraud.

18 **AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, THE UNITED**  
19 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

20 54. The Counterclaims are barred pursuant to the doctrine of illegality.

21 **AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE, THE UNITED**  
22 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

23 55. The Counterclaims are barred pursuant to the doctrine of unclean hands.

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1 **AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE, THE UNITED**  
2 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

3 56. To the extent Counterclaimants would seek interest on the Counterclaims,  
4 which claims are denied, any prayer for interest would be subject to the provisions and  
5 limitations of the statutory waivers of sovereign immunity applicable to the United States.

6 **AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE, THE UNITED**  
7 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

8 57. To the extent Counterclaimants would seek attorney's fees on the  
9 Counterclaims, which claims are denied, any such claim would be barred since the United  
10 States has not waived its sovereign immunity for such claims.

11 **AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE, THE UNITED**  
12 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

13 58. The Counterclaims are barred pursuant to *res judicata* and/or collateral  
14 estoppel.

15 **AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE, THE UNITED**  
16 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

17 59. The Counterclaims are barred pursuant to provisions of the Oil Pollution Act  
18 of 1990 ("OPA"), 33 U.S.C. §§ 2701, *et seq.*

19 **AS AND FOR AN NINETEENTH AFFIRMATIVE DEFENSE, THE UNITED**  
20 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

21 60. The Counterclaims are barred pursuant to provisions of the National Marine  
22 Sanctuaries Act ("NMSA"), 16 U.S.C. §§ 1431, *et seq.*

23 **AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE, THE UNITED**  
24 **STATES ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

25 61. The Counterclaims are barred pursuant to provisions of the Park System  
26 Resource Protection Act ("PSRPA"), 16 U.S.C. § 1911, *et seq.*

WHEREFORE, the United States of America prays as follows:

1. That United States of America be granted judgment against all Defendants pursuant to the First Amended Verified Complaint of the United States herein;

2. That the Counterclaims be dismissed, with prejudice;

3. That Counterclaimants be subject to sanctions, including, but not limited to, sanctions pursuant to Rule 11 of the Fed.R.Civ.P. pertaining to, *inter alia*, allegations of Paragraph 50 of the Counterclaims.

4. For such other relief as the Court deems just and proper in the premises.

Dated: September 3, 2008.

GREGORY G. KATSAS  
Acting Assistant Attorney General

/s/ R. Michael Underhill  
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/s/ Bradley R. O'Brien  
BRADLEY R. O'BRIEN  
Environmental Enforcement Section

Attorneys for United States of America

VERIFICATION

R. Michael Underhill says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing Answer to Counterclaims, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. §1746, that the foregoing is true and correct.

Dated: September 3, 2008.

/s/ R. Michael Underhill  
R. MICHAEL UNDERHILL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am over the age of eighteen, am not a party to this action, and that on September 4, 2008, I served a copies of the foregoing Answer of United States to Counterclaims by first-class mail, postage prepaid, to:

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ANSWER OF UNITED STATES TO COUNTERCLAIMS – C07-6045 SC

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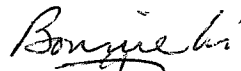
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